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Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

12 CR 626 (ER)

5 JAMES WILLIAMS,

6 Defendant.

7 -----x

8 New York, N.Y.
9 December 21, 2015

10 Before:

11 HON. EDGARDO RAMOS,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

ANDREW BAUER

17 KAN M. NAWADAY

Assistant United States Attorneys

18 LAW OFFICE OF RICHARD JASPER

19 Attorneys for Defendant

RICHARD JASPER

20 -and-

21 LAW OFFICE OF SUSAN K. MARCUS

Attorneys for Defendant

22 SUSAN K. MARCUS

1 THE DEPUTY CLERK: In the matter of the United States
2 of America v. James Williams, counsel, please state your name
3 for the record.

4 MR. BAUER: Good afternoon, your Honor. Andrew Bauer
5 and Kan Nawaday for the government.

6 THE COURT: Mr. Bauer, Mr. Nawaday.

7 MR. JASPER: Good afternoon, your Honor. Richard
8 Jasper and Susan Marcus for Mr. Williams.

9 MS. MARCUS: Good afternoon.

10 THE COURT: Good afternoon to you both, and good
11 afternoon to you, Mr. Williams.

12 THE DEFENDANT: How you doing, sir.

13 THE COURT: I'm well, thank you.

14 This matter is on for sentencing. And in preparation
15 for today's proceedings I have reviewed the following: I have
16 reviewed the letters from Mr. Williams' attorneys dated
17 November 20, 2015, which attaches, among other documents, a
18 report by a litigation specialist, also dated November 20,
19 2015; documents from family court, school, and various public
20 agencies concerning Mr. Williams and his family; copies of
21 correspondence from Mr. Williams to this Court, and to
22 then-Attorney General Eric Holder; a letter submitted by
23 Mr. Williams' brother, older brother John Williams. The
24 submissions also includes a videotape approximately 15 minutes
25 in length of interviews of Mr. Williams' mother and the mother

1 of his child. And finally, I have reviewed the government's
2 submission dated November 30, 2015.

3 I do note that there appears to be a small child in
4 the courtroom. I am trying to speak over the child. But he is
5 speaking and it is disrupting the proceedings. So if it
6 continues, I may have to ask you to take the child outside if
7 you don't mind.

8 THE DEFENDANT: Go ahead, take him outside.

9 THE COURT: So I have indicated everything that I have
10 reviewed. Is there anything else I should have received or
11 reviewed?

12 MR. BAUER: Judge, the PSR, just to be clear, is
13 dated -- the one I have is dated December 15, 2015.

14 THE COURT: Did I say something else?

15 MR. BAUER: I'm not sure if you mentioned the PSR.

16 THE COURT: It is dated December 15, 2015. And it is
17 prepared by U.S. Probation Officer Wanda Whitney, and it
18 includes a recommendation.

19 So, is there anything else, Mr. Bauer?

20 MR. BAUER: Not from the government, your Honor.

21 THE COURT: Mr. Jasper or Ms. Marcus?

22 MR. JASPER: I don't believe so, your Honor.

23 THE COURT: Okay. Mr. Jasper, let me begin with you.
24 Have you and Ms. Marcus read the presentence report and
25 discussed it with your client?

1 MR. JASPER: We have reviewed it with Mr. Williams,
2 your Honor, and discussed it, yes.

3 THE COURT: Mr. Williams, have you received a copy of
4 the presentence report and discussed it with your attorneys?

5 THE DEFENDANT: No.

6 THE COURT: You have not received it? Have you
7 discussed the presentence report with your attorneys?

8 THE DEFENDANT: Somewhat.

9 THE COURT: Okay. Mr. Williams, are you dissatisfied
10 with the amount of time that you have had to review the
11 presentence report or the time that you've had to review the
12 report with your attorneys?

13 MR. JASPER: I'm sorry, your Honor. I don't think he
14 heard the question.

15 THE COURT: Yes.

16 MR. JASPER: Can we just have one second, Judge?

17 THE COURT: Sure.

18 (Pause)

19 THE COURT: Have you had an adequate opportunity to
20 review the report and discuss it with your attorneys?

21 THE DEFENDANT: No.

22 THE COURT: Okay. Would you like some additional time
23 to review the report and to discuss it with your attorneys,
24 Mr. Williams?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Jasper, how do you wish to proceed?

2 MR. JASPER: Your Honor, if I could just have a moment
3 with Ms. Marcus and Mr. Williams.

4 THE COURT: Okay.

5 MR. JASPER: I apologize, Judge.

6 THE COURT: Do you want me to step out?

7 THE DEFENDANT: You can stay.

8 THE COURT: Okay.

9 (Pause)

10 MR. JASPER: Judge, perhaps we need a few minutes to
11 discuss this with Mr. Williams, and I'll be able to indicate
12 whether or not we're ready to proceed.

13 MS. MARCUS: Your Honor, we did visit Mr. Williams
14 this weekend in an attempt to go over the portion of the -- we
15 did visit Mr. Williams this weekend in an attempt to go over
16 the PSR in detail. Unfortunately, the day we were able to go
17 was the sabbath for Mr. Williams, and he wasn't able to do work
18 on the sabbath. So we came today and there was a delay in
19 visiting him. So apologies for delaying the proceedings.

20 THE COURT: I'll give you some time to review it with
21 him. I do note, as indicated at the beginning, that the final
22 was prepared December 15, so that's only a few days ago. I'll
23 give you some additional extra minutes to discuss it with
24 Mr. Williams.

25 MR. JASPER: Thank you, Judge.

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1 (Recess)

2 MR. JASPER: I think we're ready to proceed, your
3 Honor.

4 THE COURT: Okay. So we shall proceed.

5 Let me again turn to you, Mr. Williams. Have you had
6 an adequate opportunity to discuss the presentence report with
7 your attorneys?

8 THE DEFENDANT: Yes.

9 THE COURT: Are there any objections to the report
10 concerning its factual accuracy? Mr. Bauer. Mr. Bauer?

11 MR. BAUER: Sorry.

12 THE COURT: Any objections to the report concerning
13 its factual accuracy?

14 MR. BAUER: No, your Honor.

15 THE COURT: Mr. Jasper?

16 MR. JASPER: No, Judge.

17 THE COURT: Although I am not required to impose a
18 sentence within the sentencing range calculated under the U.S.
19 sentencing guidelines, I am required to consider the guidelines
20 in imposing sentence. And in order to do that, I need to
21 determine the applicable sentencing range.

22 Mr. Williams entered a plea of guilty to a two-count
23 superseding information charging him with taking part in a
24 conspiracy to commit an armed robbery of individuals believed
25 to be in possession of narcotics in violation of the Hobbs Act.

1 And that conduct violated 18, United States Code, Section 371,
2 and he also pleaded guilty to a count of providing a firearm to
3 another with the knowledge that it would be used in connection
4 with a crime of violence or a drug trafficking violation in
5 violation of 18 U.S.C. 924(c)(1). That second count carries a
6 mandatory consecutive term of imprisonment of 10 years.

7 The base offense level for Count One is 43, because a
8 victim was killed under circumstances that constitute murder in
9 violation of 18, United States Code, Section 1111. From that
10 three levels are deducted for Mr. Williams' acceptance of
11 responsibility yielding a total offense level of 40. And
12 because Mr. Williams has I think six criminal history points,
13 he is in criminal history category III.

14 Are there any issues concerning the accuracy of the
15 presentence report or calculation under the guidelines,
16 Mr. Bauer?

17 MR. BAUER: No, your Honor.

18 THE COURT: Mr. Jasper?

19 MR. JASPER: No, your Honor. I'm sorry, your Honor,
20 just --

21 THE COURT: Yes, sir.

22 (Defendant conferring with his counsel)

23 MR. JASPER: No objection, your Honor.

24 THE COURT: Thank you, Mr. Jasper. Based on the
25 parties' representations that in their view the guideline

1 calculation in the PSR is accurate and my independent
2 evaluation, I accept the guideline calculation in the
3 presentence report, and find that the total offense level on
4 Count One is 40, the criminal history category is III,
5 resulting in a sentencing range of 360 months to life.
6 However, as the maximum term of incarceration on Count One is
7 60 months, the effective guideline range is 60 months on Count
8 One, and the range on Count Two is 120 months, to be applied
9 consecutively, resulting in a sentencing range of 120 to 180
10 months.

11 Mr. Bauer, does the government wish to be heard before
12 I impose sentence?

13 MR. BAUER: Yes, your Honor. Thank you. Judge, this
14 case was charged back I think it was September of 2012, and we
15 have been before your Honor with both Mr. Williams and his
16 co-defendants many times, and know that your Honor is quite
17 familiar with the procedural background that's gotten us here
18 today as relates to Mr. Williams.

19 All I am saying on that procedural background is that
20 this was a very complicated case for the Court, for defense
21 counsel I know, but even for the government, your Honor. And
22 what it took was a number of meetings with defense counsel to
23 try to achieve a resolution that was acceptable to
24 Mr. Williams, but also acceptable to all the parties to make
25 sure that Mr. Williams was in fact competent and able to

1 represent himself in his own defense.

2 I think we did that, your Honor. And I think to
3 Mr. Jasper and Ms. Marcus' credit, they were amazing advocates
4 for Mr. Williams. Patient and really compassionate to his
5 needs. And they advocated strongly for his interests as it
6 relates to the resolution, in particular for Mr. Williams.

7 I bring this up, your Honor, because there are times
8 where there are cases before your Honor where the parties reach
9 an agreement, but at the end of the day we say, all right, the
10 sentence can be anywhere between the mandatory minimum and life
11 and we'll see where the judge comes out here.

12 Your decision here at sentencing, obviously, is the
13 only one that controls, but I want to draw specific attention
14 to the resolution here today. As I just said, if not for the
15 advocacy of Mr. Jasper and Ms. Marcus, before we were even
16 sitting here today, the guidelines would be 360 to life and
17 your Honor could choose to go lower than 360 to life, but who
18 knows if you actually would have gone all the way to down to
19 what defense counsel is asking for, which is 10 years.

20 On the other hand, we came up with a nuanced
21 resolution here that both satisfied the government's interest
22 but also defense's interest by capping Mr. William's exposure
23 at 15 -- at 15 years. At least functionally capping it at 15
24 years.

25 So, I say this all to say, your Honor, that a lot of

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1 advocacy was done before we came into your courtroom here
2 today, and from our perspective, the guidelines sentence which
3 is 15 years, 180 months, represents not only a pie in the sky
4 number or just simply something that's been divined by the
5 sentencing commission, but rather, something that is a fair
6 outcome for Mr. Williams, and one that we arrived on with a
7 tremendous amount of work.

8 Now, why do I say that 180 months is appropriate for
9 Mr. Williams? Well, your Honor, you sat through the trial of
10 Mr. Williams' co-defendants, and you heard some of the evidence
11 against Mr. Williams. You heard the cooperating witnesses talk
12 about how he was a leader of the Bloods there in Newburgh. You
13 heard police officers who had seized crack, who had seized guns
14 from his apartment. And of course you heard about his role in
15 the murder of Jeffrey Henry.

16 He was not there shooting the gun. He was not even
17 there on site at the time. But, he was instrumental in the
18 planning, he recruited members, he was responsible for getting
19 the guns, he, if you remember, he also cased the house on
20 Chambers Street. He visited a friend who lived across the
21 street and wanted to stay there during the course of the
22 robbery to make sure it went through.

23 So the evidence was overwhelming as to what you've
24 heard. I will also note, your Honor, that as a result of the
25 various Bloods prosecutions that were before Judge McMahon,

1 there were a number of cooperating witnesses who you didn't
2 hear from who, the only person from our case, from our
3 six-defendant case who they knew was James Williams. Had James
4 Williams gone to trial, the cooperator list -- we would have
5 used our discretion and not put on too many repetitive
6 witnesses -- but our cooperating witness list would have
7 doubled or tripled.

8 They all knew about Mr. Williams, they all knew about
9 his extensive drug business, his possession of guns, storing
10 them all throughout the city, and his leadership role in the
11 Bloods.

12 So when looking at his conduct, when looking at the
13 guidelines, when looking at the 3553(a) factors, your Honor, 15
14 years is what we think is reasonable, and specifically to
15 address all the 3553(a) factors.

16 Before I sit down I will address the mental health
17 issues that are raised in great detail in defense counsel's
18 submission. I will raise them to say only that I'm not an
19 expert, Mr. Nawaday is not an expert on mental health and the
20 best place and the best situation to treat Mr. Williams. All I
21 have is my own observations, and my own experiences with other
22 defendants. But what struck me, your Honor, not being an
23 expert but rather just looking at his history, is it's the
24 streets of Newburgh or being out rather than being in prison
25 did not seem to treat Mr. Williams well. He thrived as a

1 criminal, but his mental health issues were still extensive.

2 And so, to the extent the argument is let him out
3 early so he can address his mental health issues, I would say I
4 don't see any real argument as to why he would do better out
5 versus in jail. I mean, I've obviously read the submission,
6 but I think Mr. Williams' history, his pattern, make it clear
7 that when he's out, he was not doing better. He was doing
8 worse. He was locking himself in the bathroom for hours at a
9 time and Geneva didn't know what was going on. So, it's not --
10 I'll stop my sentence there.

11 Your Honor, at the end of the day, as we wrote in our
12 submission, Mr. Williams has his issues, and we don't minimize
13 them. But it is our job and I think your Honor's job and
14 3553(a) to not only think about Mr. Williams, but to think
15 about the public and to protect the public from his ongoing
16 crimes. He spent a career committing crimes and torturing the
17 streets of Newburgh while he was out. And here in this case,
18 in this courtroom, he's demonstrated that his mental health is
19 still very much an issue. And for the sake of the public, the
20 government submits that a guideline sentence of 180 months is
21 appropriate.

22 THE COURT: Can I ask you before you sit down,
23 Mr. Bauer.

24 MR. BAUER: Sure.

25 THE COURT: Do you have any insight into the crime

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1 that's discussed at paragraph 37 of the presentence report?
2 Which, strictly speaking, apparently he was charged with
3 menacing in the second degree, but the description says that,
4 according to Orange County, New York State records, the
5 defendant was charged with causing the death of an individual.
6 Do you have any insight into what happened there?

7 MR. BAUER: Judge, I believe that is referring to a
8 separate charge on which Mr. Williams went to trial as a murder
9 trial and in which he was ultimately acquitted. So, I
10 certainly know that the last sentence, the death of Elisha
11 Stubbs, relates to that.

12 THE COURT: Okay.

13 MR. BAUER: I can look at the rap sheet if you want me
14 to, but I don't know the exact relationship between that trial
15 and the crime that's in paragraph 37.

16 THE COURT: Okay. Thank you.

17 MR. JASPER: I think that's accurate, your Honor.
18 There was a full-blown acquittal on that.

19 THE COURT: I was going to ask you too, Mr. Jasper.

20 MR. JASPER: I should have been more patient, Judge.

21 THE COURT: That's quite all right.

22 MR. JASPER: Full-blown acquittal of that charge.
23 Sorry.

24 MR. BAUER: So in other words, I think that's
25 consistent with what the folks in Newburgh had told me, that he

1 was convicted of the menacing but acquitted of the murder.

2 THE COURT: Okay. Thank you. Mr. Jasper or
3 Ms. Marcus, did you wish to be heard?

4 MS. MARCUS: Just briefly, Judge.

5 THE COURT: Please use the microphone if you don't
6 mind.

7 MS. MARCUS: Sure. As Mr. Bauer says, this negotiated
8 disposition was a result of a lot of advocacy, and so the range
9 between 10 and 15 years is something -- and we lobbied very
10 hard for there not to be a mandatory minimum of 10 years
11 feeling like that was a very significant sentence for
12 Mr. Williams, who, as the government concedes, was not present
13 at the time of the robbery, was not the person who initially
14 organized. That was Mr. Christian.

15 The information the government cites, they had the
16 benefit of course of presenting evidence at a trial that was
17 absolutely untested and uncrossed by us or our interests. And
18 in fact, many of the co-defendants' counsel were happy to have
19 more of the blame be put on Mr. Williams during the trial. So
20 to draw inferences based upon that proceeding when we were not
21 present and had no ability to test and cross-examine the
22 witnesses is not fair to Mr. Williams.

23 The testimony that did come was all cooperators that
24 was against Mr. Williams, and one of whom, Mr. Mallory, is on
25 video with Mr. Burden, literally plotting the murder of

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1 Mr. Williams. Not only did he have certainly an interest in
2 minimizing his own role, but he also had a tremendous amount of
3 animosity towards Mr. Williams.

4 So, the lengthy sentence of incarceration of 10 years
5 here, the mandatory minimum, is necessary because it is a
6 mandatory minimum, but it is unfortunate. A longer sentence
7 than 10 years is longer than necessary. There must also be an
8 attempt at rehabilitation. It can't just be punitive. It
9 can't just be incarceration. It must also be an attempt at
10 rehabilitation.

11 Mr. Williams, as your Honor knows, as Mr. Williams has
12 written to your Honor during the time of his incarceration --

13 THE COURT: He has written to me.

14 MS. MARCUS: Sorry?

15 THE COURT: He has written to me.

16 MS. MARCUS: About the trials and difficulties, the
17 tremendous difficulties that he had during the time of his
18 incarceration. With the difficulties he had in feeling that he
19 was being assaulted when he was in prison. It's not an easy
20 place for him. He's much more -- he's done a tremendous job
21 since he's been in prison really finding his way to God,
22 finding a way towards peace for himself. He is fully in God's
23 light now. We've seen a change certainly in our relationship
24 with him and in his ability to be present and to communicate
25 with us as a result. But it's been a great, great struggle for

1 him, and he still struggles.

2 So, we would greatly dispute that prison is somehow
3 better or okay for him, and he didn't do well in the community,
4 so you might as well keep him in jail for as long as you can.

5 Geneva, his partner in life, has stood by him this
6 entire case. His son Kaden is here as well, your Honor. You
7 heard him before. He is thankfully sleeping now. But he is a
8 tremendous light and benefit. James's mother talked about how
9 different James became. Kaden is now four. He was just a baby
10 when James was first arrested in this case, so he hasn't had
11 enough of an opportunity. He was just beginning to bond, you
12 know. When these crimes were committed, Kaden wasn't born yet.
13 So Kaden has since been born. There was a delay in when the
14 crimes were committed and he was arrested. He has since been
15 born and he is a tremendous source of positivity.

16 His family, of course, is -- these kind of things have
17 a tendency to coalesce family and wake them up and attend to
18 needs. This case and this experience and him going away for
19 such a significant period of time already has really mobilized
20 different members of his family to be more involved.

21 So, getting out he's also going to be significantly
22 older. We mentioned in our submissions of course about aging
23 out and how people -- he's certainly a very different person.
24 He's also going to be coming out much older and with connection
25 and commitment to family.

1 We also raise the research questioning the
2 relationship between long sentence and improved public safety.
3 A sentence of 10 years is more than sufficient. And as the
4 government conceded, again, his role in the offense, Rashawn
5 Vassell got a sentence of 18 and a half years. Giving him a
6 sentence of 15 years is much too close to somebody who was
7 actually in the apartment committing the robbery, who was one
8 of the shooters in the robbery. That would be a gross
9 injustice to give him time close to that.

10 The PSR recommends the minimum. They recommend 10
11 years, and that was a result -- he spent a lot of time talking
12 with Ms. Whitney. She spent time with Mr. Williams, she went
13 and reviewed a lot of his life history records. And she took
14 time to really be thoughtful and make a considered
15 recommendation of what she thought, having viewed all of the
16 massive amount of evidence that she was able to gather in the
17 case.

18 So, we urge your Honor to sentence him to 10 years on
19 Count Two, and one day on Count One.

20 THE COURT: Thank you, Ms. Marcus.

21 Mr. Williams, you have an absolute right to address
22 the Court before I impose sentence. Is there anything that you
23 wanted me to know or anything you wanted to say?

24 THE DEFENDANT: Yes, sir. I'm going to give you a
25 brief history of who I am as a person, as a dad.

1 With all due respect, it is the prosecution job to do
2 a thorough investigation concerning me, my past prior history,
3 so forth. And the case of Elisha Stubbs, I was charged with
4 attempted murder. Attempted murder and menacing. After all
5 the information that the City of Newburgh Police Department
6 received, even from their main witness, Donovan James a/k/a
7 Snoopy, and the government is more than welcome to look into
8 this matter, he took the stand and even admitted that I wasn't
9 even there. That I had no part to do with it. All of their
10 witnesses stated that. That's why I was acquitted.

11 Being how the government wanted to find me guilty on
12 something because I sat in jail for two years, even when they
13 had a Brady violation, when I wrote to you before, I was
14 familiar with the Brady violation, so I sat in jail for two
15 years, even when the government was withholding Brady material.
16 And the police, the City of Newburgh didn't do a thorough
17 investigation. However, I'm -- the reason I'm telling you is
18 to give you a history on Jamar Mallory, Kevin Burden, and where
19 the dislike and hatred comes from, and why so many people have
20 it in for me because of this case.

21 Elisha Stubbs was very liked in the community. He was
22 related to Jamar Mallory and Kevin Burden. So you have a lot
23 of people in the neighborhood who felt I got off the hook.
24 That they felt like I really had something to do with that.
25 But in all due respect, I had nothing to do with that.

1 So I was living in the community where a lot of people
2 was smiling in my face, but they was plotting my demise behind
3 my back.

4 So any given situation that they could take, they
5 would have did that. And the police department, to try to mend
6 their wrongs, and the prosecution put in the newspaper
7 concerning me. Where the guy named Maurice Owens who got
8 caught selling drugs and so forth, and he lied on the stand.
9 He never showed up so my attorney could cross-examine him and
10 he left. But during that process, the prosecution felt to put
11 in the newspaper that James Williams said that stitches gets
12 snitches. Snitches get stitches, and all that type of stuff.
13 And then they tried to put me in a Abner Alvarez case. And me
14 and Abner Alvarez, we share the same child's mother, and it was
15 the prior case that happened before with that case.

16 So what happened was I had people from -- people not
17 liking me in the City of Newburgh that wanted my demise, and I
18 had people from the black community that wanted my demise. So
19 I was in the crossroad of two things trying to figure out -- I
20 got caught in, you could say, some politics. Some politics on
21 the police department and the prosecution.

22 And this, so when the police, the feds are doing their
23 sweeps in the City of Newburgh, everybody start making up
24 rounds and in the Spanish community and the black community.
25 Now everybody said, well, the feds are doing this because of

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1 James Williams, because of James Williams, because it was
2 placed in the newspaper article about James Williams. So
3 everybody felt like why he still out there.

4 So you got single mothers still out there, and I'm out
5 there with obviously with Geneva, so a lot of people felt
6 jealous and a lot of people wanted revenge, because they felt I
7 had something to do with these crimes that took place that I
8 had nothing do with.

9 This case that -- so I say that because the government
10 claims that they would have had so many witnesses. Of course,
11 because a lot of people feel like I am the cause of their
12 child's father or their sister or brother being in jail for
13 what happened during the Elisha Stubbs case.

14 Now if it was up to the prosecution, like I told my
15 attorneys, everybody do their investigation. They would have
16 clearly seen that the way this case was being, how it was all
17 set up for me to take the fall. It was all this, but I was
18 willing to take responsibility. Not because I'm guilty of
19 anything or that I did anything wrong. But simply because
20 there was a weapon that I did, I did know there was a weapon.
21 However, I told the individuals not to go commit a robbery. I
22 even went to go and stop the robbery from happening.

23 When this case first started, I was willing to take 10
24 years for everybody. But my co-defendants and everybody had a
25 different agenda. They even placed me and what was that --

1 Westchester County, where the whole bunch of Spanish people was
2 at. I got jumped over there by a whole bunch of Spanish people
3 who felt I had something to do with that.

4 Then I got sent over here. Then I had a problem where
5 they kept me in the box for nine months for no reason over
6 here. So they just kept on moving me back and forth. So I
7 never really had the opportunity to talk to my co-defendants or
8 really sit down with my attorneys really during that time and
9 really give them this details that I'm giving your Honor now.

10 So with all due respect, I'm willing to take any time
11 you're willing to impose. Any time that you're willing to
12 impose. Because with all due respect, your Honor, the truth
13 shall set you free. My truth is that I did know there was a
14 weapon. My truth is also that I told them not to take the
15 weapon. And my truth is I went to go stop it from happening.
16 That's my truth. I could speak upon me.

17 But as far as anything else is, they never went to my
18 apartment because I had no apartment. Like he said they went
19 to my -- found crack cocaine. I had no residency. I was
20 sleeping in a hotel room. I was living with her every so
21 often. They raided the apartment, they didn't find nothing in
22 there. I didn't have no residence. They checked 156
23 Washington Street during this case with Elisha Stubbs. They
24 went in there, they didn't find no crack cocaine in that case
25 neither. They checked my clothes, they checked ballistics,

1 they had witnesses. They did a poor investigation. The same
2 as they did in this case. They raided my house when my son was
3 in there. They found no weapon. They found nothing that could
4 link me to the individuals who had a dislike towards me. And
5 that's the bottom line. So, Geneva is here, she could verify
6 that. I'm pretty sure the police report would verify that. I
7 didn't have no residence.

8 So in the indictment, when they said that me and
9 everybody met at my apartment, I had no apartment. I was
10 struggling. I had no apartment to speak of. We wasn't at
11 Geneva's house. We weren't at Jamar Mallory's house. I was
12 living in a hotel. I was staying at the Econo Lodge. So I had
13 no residence where the police could bring up in there and find
14 weapons and crack cocaine and all this different stuff they
15 claimed they found, which is a lie.

16 The police department, and the sad thing about this,
17 your Honor, is you got a lot of individuals who used the
18 government as a crutch. They go out there and they commit
19 crimes, and they inform for the government at the same time,
20 such as Jamar Mallory and such as many other people that will
21 say anything, and it's disgusting to me that somebody lost
22 their life and somebody would use somebody's death as a crutch
23 to get off of a case or out of a situation.

24 But I was always taught to be a man and take
25 responsibility for my actions. So I take responsibility for my

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1 actions.

2 Now there was a discrepancy between me and my
3 attorneys because I didn't discharge no weapon or hand anybody
4 a weapon. But being I know there was a weapon, I copped out to
5 that. So I ask that you take that into consideration.

6 With all due respect, God's will will be done and it
7 will be done concerning me. You said based on my PSI report
8 that comes back you would determine my sentence. That's what
9 you stated before, your Honor. So, I'm just holding you to
10 your word, that's it.

11 THE COURT: Thank you, Mr. Williams.

12 MR. BAUER: Judge.

13 THE COURT: Based on Mr. Williams' statement, does
14 either party want to -- Ms. Marcus or Mr. Bauer?

15 MS. MARCUS: I would like to remind the Court,
16 Mr. Williams' allocution at the time of the plea was that he
17 allowed others to take possession of a weapon that he knew
18 could be used in a robbery and was discharged, and that
19 satisfies the elements of the offense.

20 MR. BAUER: Judge, on that point, we were looking over
21 the allocution, and Mr. Williams did allocute as Ms. Marcus
22 just said. At the end he said something that made it similar
23 to what he said here today, that he didn't condone the robbery,
24 and I think he said he tried to talk the person out of doing
25 the robbery.

1 So we had asked you to clarify with Mr. Williams that
2 irrespective of that, he gave the gun knowingly and he did so
3 knowing it could be used in the robbery, and that was
4 sufficient to meet the elements of the plea.

5 I'm not sure Mr. Williams has said anything
6 inconsistent with that here today, so I'm not sure you need to
7 ask him any further questions, but I leave it to you.

8 THE COURT: Very well.

9 MR. BAUER: The one thing that did concern me, if we
10 could ask Mr. Williams, in the middle there, and I'm thinking
11 about potential future litigation when I ask this question, is
12 he said he didn't have time to talk to his lawyers. It is my
13 understanding, having spoken to counsel, that -- without them
14 waiving any privilege -- that they made a number of efforts to
15 speak to him, and they did speak to him a number of times.

16 Perhaps you can ask Mr. Williams if that reference was
17 to a reference early on in the case. But sitting here now, if
18 he was given that time.

19 THE COURT: If he said that precisely, I may have
20 missed what the timing of it was.

21 MS. MARCUS: I think he said he didn't have time to
22 review the PSR with us.

23 THE DEFENDANT: No, that's not what I said.

24 MR. BAUER: I think he was talking about early in the
25 case. So I guess I just wanted, I wanted to be clear, you

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1 asked Mr. Williams before he pled guilty if he was satisfied
2 with his attorneys' representation. Perhaps we could just
3 clarify that.

4 THE COURT: Okay. Mr. Williams, at the time that you
5 pled guilty, I asked you, and you were under oath, and you said
6 you were satisfied with the representation of Mr. Jasper and
7 Ms. Marcus at the time that you took a guilty plea. Are you
8 saying something different now or were you satisfied at that
9 time with their representation?

10 THE DEFENDANT: What I was saying, your Honor, to
11 clarify, was that the investigation in this case, they couldn't
12 really thoroughly investigate the case as far as because I was
13 having issues concerning where I was being placed and things of
14 this nature. So the things I am disclosing to them now, I
15 haven't disclosed that information either to Susan Marcus or
16 Richard Jasper, because at that particular time I didn't know
17 who to trust because I was being flipped over here, I was going
18 over here, I was all over the place. So, the stuff that the
19 government is claiming to use in my PSI and things of that
20 nature, the things I told you, I haven't really told my defense
21 counsel. And that's what that lies at.

22 MS. MARCUS: Judge, if I may, I don't think that the
23 Court is going to hold an acquittal against Mr. Williams for
24 the prior case. I will say that Mr. Jasper and I did do an
25 extensive amount of investigation on that prior case that did

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1 come up at some point in this case. We spoke with his prior
2 counsel, Catherine Lee, on that case, we spoke with witnesses
3 on that case. And were satisfied that the acquittal was in
4 fact the right result. So we did spend a great deal of time
5 looking into that, but he was acquitted on that prior case.

6 THE COURT: Ms. Marcus is absolutely correct that I am
7 not going to hold that prior case against you, Mr. Williams, in
8 way, shape or form. That will not be part of my sentence.

9 THE DEFENDANT: Thank you, sir.

10 THE COURT: Okay?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Bauer, do you wish me to ask any other
13 questions?

14 MR. BAUER: No, I guess that -- I guess the
15 clarification, I think, unless you disagree, your Honor, is
16 satisfactory as to Mr. Williams' views on his counsel.

17 THE COURT: I should probably state for the record,
18 Mr. Williams made reference to various correspondence that he
19 provided to me and other members of the government concerning
20 difficulties that he believed he was having with his
21 representatives on the case. In particular, he believed, and
22 this is part of what was provided to me by Ms. Marcus and
23 Mr. Jasper. Of course I do recall at the time that it was
24 occurring that Mr. Williams believed that certain individuals
25 associated with the state prosecutors office were making

1 believe they were other people representing his interests, and
2 he was obviously very concerned about that.

3 It is partly as a result of that correspondence and
4 other issues that were communicated to me by Ms. Marcus and
5 Mr. Jasper that a doctor whose name escapes me right now had
6 the opportunity to examine him early on in this case. Based on
7 those observations, I determined, with the consent of the
8 government and the consent of the defendant, that it was
9 appropriate to have Mr. Williams examined so we could have some
10 professional determination as to his mental health and his
11 ability to participate effectively in his defense.

12 After that evaluation was conducted, it was determined
13 that Mr. Williams was indeed competent. But, the issue of
14 Mr. Williams' mental health has certainly always been at the
15 forefront of this case.

16 I am satisfied, based on the representation that he's
17 made and the representations of Ms. Marcus that he is satisfied
18 with the representation that he received, that he was satisfied
19 at the time that he took the guilty plea with the
20 representation that he received. And based on my observations,
21 based on my vantage point, Mr. Jasper and Ms. Marcus have done
22 extraordinary work in communicating with Mr. Williams,
23 attempting to communicate with him at times when it was
24 difficult to do so, making sure that he received the very best
25 professional help, and advocating forcefully on his behalf. So

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1 that will be that.

2 Unless there is anything else, in deciding what
3 sentence to impose, I have considered all of the factors set
4 forth in Section 3553(a) of Title 18 of the United States Code,
5 including Mr. Williams' history and characteristics and the
6 nature and circumstances of the offense. I have considered the
7 need for the sentence imposed to reflect the seriousness of the
8 offense, to promote respect for the law, to provide just
9 punishment for the offense, to afford adequate deterrence to
10 criminal conduct, to protect the public, and to provide
11 Mr. Williams with needed medical or other correctional
12 treatment in the most effective manner. I have considered the
13 guidelines issued by the sentencing commission, and the
14 applicable commentaries thereto. And as particularly important
15 in this case, I've considered the need to avoid unwarranted
16 sentence disparities among similarly situated defendants.

17 And having considered all of these factors, it is my
18 intention to accept the recommendation of the probation
19 department and impose a sentence of 120 months, plus one day on
20 the counts of conviction. That will be followed by three years
21 of supervised release on each count to be served concurrently.
22 I will also impose the \$100 special assessment as I am required
23 for a total of \$200. I will not impose a fine as I find that
24 Mr. Williams is not able to pay a fine. And I believe that
25 this sentence is sufficient but not greater than necessary to

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1 comply with the purposes of sentencing set forth in Section
2 3553(a)(2) for the following reasons.

3 First of all, I note that this is obviously an
4 incredibly serious crime with tragic consequences. As
5 Mr. Bauer indicated, I presided over the trial of the three
6 co-defendants and was able to see through the testimony of the
7 various cooperating witnesses the environment in which
8 Mr. Williams was raised. And it is truly disturbing the lack
9 of appreciation on the part of all these young men,
10 Mr. Williams included, the fragility or sanctity of human life,
11 much less the danger they exposed themselves to on a daily
12 basis. It was truly, as one of the defense lawyers put it in
13 his opening statement, another world that the jury would have
14 to enter in order to try to understand what motivated these
15 young men.

16 And to be sure, no one in this room should be terribly
17 surprised that Mr. Williams turned out as he did and came to
18 live the life that he did. He is a person, like several of his
19 co-defendants, about whom it can be said that he barely had a
20 chance in life. His father abandoned him, his mother was
21 unable to care for him and his older brothers as a result of
22 her addictions and mental health problems. The difficulties
23 that he faced as a child are almost Dickensian in terms of the
24 relentless misery that he lived through.

25 I read with particular interest the letter of

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1 Mr. Williams' brother John, when he was still a child himself,
2 was the role model that Mr. Williams looked up to. And when
3 John was arrested at 16 years of age, Mr. Williams was left
4 homeless at 15 years of age.

5 So it truly is a tragedy that he had to live through,
6 and no doubt he probably experienced, as was evident in the
7 reports that were submitted, undiagnosed mental health issues
8 even as a very young child.

9 At the same time, the Court cannot overlook the
10 immensity of the criminal activity that led Mr. Williams here.
11 A man is dead and Mr. Williams played a supporting role in his
12 death. The sentencing guidelines rightfully reserve the most
13 serious sentences for cases such as these. And Mr. Williams, I
14 have to say, has been granted an extraordinary benefit by the
15 government, and I congratulate the government for its
16 reasonableness on the circumstances of this case by being
17 allowed to plead to an offense that is limited to no more than
18 15 years' incarceration.

19 I must also note that despite the mental health
20 difficulties that have been discussed and that play such a
21 prominent role in the defense submission, Mr. Williams has
22 always seemed to me to be a person of some skill. Even today
23 when he spoke, he spoke very eloquently on his own behalf. He
24 clearly had an idea of what he wanted to say and he said it
25 cogently and he said it well. And I recall that during the

1 videotape that was played at trial, one of the gentlemen, I
2 forget whether it was Mr. Burden or Mr. Mallory, referred to
3 Mr. Williams' leadership role and noted that Mr. Williams was
4 able to inspire the respect of the other young men who were
5 part of his set, as it were. Noting that Mr. Williams had the,
6 quote, gift of gab.

7 I also note that Mr. Williams, at age 31 now, was
8 substantially older than the other defendants in this case,
9 almost all of whom I believe were 21 years or younger at the
10 time that the crime was committed. So he does have some skills
11 that he was able to use, unfortunately, in connection with his
12 criminal activities.

13 I have no doubt that there is continuing mental health
14 issues that are afflicting Mr. Williams. And I have, despite
15 my observations of his sometimes very articulate arguments, I
16 have no sense whatsoever that he is malingering. It therefore
17 becomes difficult to know what exactly can be done, what is
18 right in terms of imposing sentence with an individual with the
19 background that Mr. Williams has, the serious crime with which
20 he has been convicted, and the needs that we now take on as a
21 responsibility in order to look after his mental health needs.
22 It is difficult to know what's right, and there is no magic to
23 any of these numbers.

24 But I believe that on the whole, it will do neither
25 Mr. Williams nor society much good to keep him in jail for

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1 longer than 10 years. 10 years is an awfully long time, and he
2 will have the benefit of mental health treatment during that
3 time. And as difficult as it is in some of these cases, I do
4 believe that a sentence of 120 months and one day on Count One
5 is sufficient but not greater than necessary to meet the needs
6 of sentencing.

7 Is there any reason other than what's already been
8 stated why the sentence should not be imposed as I've
9 indicated, Mr. Bauer?

10 MR. BAUER: No, your Honor.

11 THE COURT: Mr. Jasper or Ms. Marcus?

12 MR. JASPER: No, your Honor.

13 MS. MARCUS: No, your Honor.

14 THE COURT: In that event, it is the judgment of this
15 Court that Mr. Williams be commit to the custody of the bureau
16 of prisons for one day on Count One, and 120 months on Count
17 Two. That will be followed by three years of supervised
18 release on both counts of conviction to be served concurrently.
19 I should add that the 120 months will be served consecutively
20 to the one day that is imposed on Count One.

21 The standard conditions one through 13 of supervised
22 release shall apply as well as the following special and
23 mandatory conditions:

24 The mandatory conditions are that Mr. Williams not
25 commit another federal, state or local crime; not illegally

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1 possess a controlled substance; not possess a firearm or
2 destructive device; shall refrain from any unlawful use of a
3 controlled substance; and shall cooperate in the collection of
4 DNA as directed by the probation officer.

5 And the following special conditions shall apply:
6 Mr. Williams shall participate in an outpatient mental health
7 treatment program approved by the United States probation
8 office, and shall continue to take any prescribed medications
9 unless otherwise instructed by the health care provider.
10 Mr. Williams shall submit his person, residence, place of
11 business, vehicle, and any other premises under his control to
12 a search on the basis that the probation officer has reasonable
13 belief that contraband or evidence of a violation of the
14 conditions of release may be found. The search must be
15 conducted at a reasonable time and in a reasonable manner. And
16 failure to submit to such a search may be grounds for
17 revocation. Mr. Williams is to report to the nearest probation
18 office within 72 hours of release. And if he does not live in
19 this district, it is recommended that he be supervised by the
20 district of residence.

21 He's also ordered to pay the mandatory special
22 assessment of \$100 on each count for a total of \$200 which
23 shall be due immediately.

24 As I indicated previously, I will not impose a fine.
25 Is the government seeking forfeiture in this case?

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MR. BAUER: No, your Honor.

THE COURT: Very well. That constitutes the sentence of this Court.

Mr. Williams, because I sentenced you to below the stipulated range in your plea agreement with the government, your appellant rights are very limited. However, Mr. Jasper and Ms. Marcus, will you assure me that you will promptly and thoroughly discuss with Mr. Williams the effect of the plea agreement on his appellate rights?

MR. JASPER: Yes, your Honor.

THE COURT: Are there any other applications?

MR. BAUER: From the government, just one. There are a number of other counts in the underlying charging instruments. The original indictment through the S3. The government would move to dismiss all of those open counts at this time.

THE COURT: That application is granted.

Ms. Marcus.

MS. MARCUS: Yes, Judge. We would ask for a designation to Devens Medical Facility for Mr. Williams.

THE COURT: I will make that recommendation. However, Mr. Williams, you should understand that I can only recommend to the bureau of prisons where they designate you. I can't direct them to one particular facility. Is there anything else?

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1 MR. JASPER: No, your Honor.

2 THE COURT: In that event, we are adjourned.

3 Mr. Williams, good luck to you, sir.

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